

# **SUPERIOR COURT OF CALIFORNIA**

**County of San Diego**

**DATE: August 9, 2006**

**DEPT. 71**

**REPORTER A:**

**CSR#**

**PRESENT HON. RONALD S. PRAGER**

**REPORTER B:**

**CSR#**

**JUDGE**

**CLERK: K. Sandoval**

**BAILIFF:**

**REPORTER'S ADDRESS: P.O. BOX 120128**

**SAN DIEGO, CA 92112-4104**

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## **RULING AFTER ORAL ARGUMENT**

**COMPELLING COMPLIANCE WITH SUBPOENA ISSUED TO ECON ONE, INC.  
AND DR. MICHAEL HARRIS**

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**IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)**

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The attached Court's ruling regarding ruling after oral argument compliance with subpoena issued to Econ One and Dr. Michael Harris applies to all cases listed as follows:

<b>4221-00020</b>	<b>UYEDA vs CENTERPOINT ENERGY INC</b>
<b>4221-00021</b>	<b>BENSCHIEDT vs AEP ENERGY SERVICES INC</b>
<b>4221-00022</b>	<b>COUNTY OF SANTA CLARA vs SEMPRA ENERGY</b>
<b>4221-00023</b>	<b>CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY</b>
<b>4221-00024</b>	<b>COUNTY OF SAN DIEGO vs SEMPRA ENERGY</b>
<b>4221-00025</b>	<b>OLDER vs SEMPRA ENERGY</b>
<b>4221-00026</b>	<b>CITY OF SAN DIEGO vs SEMPRA ENERGY</b>
<b>4221-00027</b>	<b>TAMCO vs DYNEGY INC</b>
<b>4221-00028</b>	<b>A L GILBERT COMPANY vs CORAL ENERGY RESOURCES LP</b>
<b>4221-00029</b>	<b>OBERTI WHOLESALE FOOD INC vs ENCANA ENERGY SERVICES INC</b>
<b>4221-00030</b>	<b>BROWN vs ENCANA ENERGY SERVICES INC</b>
<b>4221-00031</b>	<b>LOIS THE PIE QUEEN vs ENCANA ENERGY SERVICES INC</b>
<b>4221-00032</b>	<b>VITTICE CORPORATION vs ENCANA CORPORATION</b>
<b>4221-00033</b>	<b>COUNTY OF ALAMEDA vs SEMPRA ENERGY</b>
<b>4221-00034</b>	<b>THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC</b>
<b>4221-00035</b>	<b>SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY</b>
<b>4221-00036</b>	<b>ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY</b>
<b>4221-00037</b>	<b>OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY</b>
<b>4221-00038</b>	<b>TEAM DESIGN DBA TIMOTHY ENGELN INC vs RELIANT ENERGY INC</b>
<b>4221-00039</b>	<b>CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC</b>
<b>4221-00040</b>	<b>SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC</b>
<b>4221-00041</b>	<b>SHANGHAI 1930 RESTAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC</b>

**4221-00042    PODESTA vs ENCANA ENERGY SERVICES INC**  
**4221-00043    NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY**  
**4221-00044    COUNTY OF SAN MATEO vs SEMPRA ENERGY**  
**4221-00045    BUSTAMANTE vs WILLIAMS ENERGY SERVICES**  
**4221-00046    PABCO BUILDING PRODUCTS vs DYNEGY INC**  
**4221-00047    BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC**

After hearing the argument of counsel, the Court affirms and supplements the tentative ruling. The motion for an order compelling compliance with the subpoena issued to Econ One, Inc. and Dr. Harris is denied.

Defendant seeks to compel Dr. Harris and Econ One Research to produce all of the data used by Dr. Harris in formulating his opinion for the class certification in the NYMEX matter as well as Dr. Harris' class certification opinion in that matter. Defendant admitted during oral arguments that it already has possession of these most pertinent documents. Defendant is at liberty to conduct discovery on the west coast hub data upon which Dr. Harris may have relied. Anything further from the New York case regarding opinions by Dr. Harris are, by Defendant's own admission, subject to the claim of privilege as attorney work product until October 18, 2006, at the earliest. Anything further from the New York case is also specifically subject to the federal court's protective order in that case. Based on the law of supremacy, the California trial court is not in a position to override or subvert a federal court order out of the southern district of New York. The court believes Defendant has more than enough information to oppose the class certification. Moreover, Defendant can continue to conduct permissible discovery. Defendant may, at its choosing, go to the federal court in New York and pursue a course of action relative to the protective order. And, lastly, in the event the class is certified and Defendant thereafter discovers information that could affect that certification, Defendant is free to present a motion to decertify the class.

The Court remains firm in its reading and interpretation of Dr. Harris' declaration that he did not rely on his reports and information generated in the NYMEX matter in reaching his opinion in this case. Rather, Dr. Harris stated that he reviewed a voluminous amount of material in the course of his work on this case just as he reviewed a voluminous amount of material for the NYMEX matter and just as he reviewed voluminous amount of material for his testimony before the FERC.

Assume, for argument's sake, the court accepts Defendant's reading of Dr. Harris' declaration, to wit: Dr. Harris relied on his opinion in the NYMEX matter in forming his opinion in this case. Assume further that the court applies *National Steele Products Co. v. Superior* (1985) 164 Cal.App.3d 476 to Defendant's reading of the declaration. Lastly, assume Dr. Harris becomes Plaintiff's designated expert pursuant to Code of Civil Procedure §2037. Making all three assumptions, Defendant would be entitled to less than it already has in its possession. Under *National Steele* and all of the assumptions, Defendant would be entitled to Dr. Harris' opinion on the class certification in the NYMEX matter subject to consideration and possible redaction for claims of privilege and attorney work product. The

opinion would also remain subject to the federal court's protective order over which this court has no jurisdiction. Here, Defendant admitted in open court, that it has in its possession Dr. Harris' complete and unredacted opinion from the NYMEX case despite the protective order. Moreover, Defendant has had the opportunity to depose Dr. Harris on this opinion. Defendant has more in its possession now than this court could ever order.

It is so ordered.